IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8459 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANDHINAGAR NAGRIK COOPERATIVE BANK LIMITED

Versus

PINAKIN KANUBHAI PATEL

Appearance:

MR JAYANT PATEL for Petitioner

UNSERVED-REFUSED (N) for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. Heard learned counsel Mr. Jayant Patel appearing on behalf of the petitioner. Notice was issued to the respondents, but they have refused to accept the notice.

Hence Rule.

2. The present petition is directed against the order passed by the Gujarat State Cooperative Tribunal dated 9-6-2000 in Appeal No. 236 of 2000.

3. It is stated that the petitioner has filed a Lavad Suit No. 1084 of 1999 before the Board of Nominee for realising the principal amount of Rs.4,71,623-00 along with the interest. The Board of Nominee decreed the suit. Having felt aggrieved by the decree passed by the Board of Nominee, the respondents herein filed appeal No. 236/2000 before the Cooperative Tribunal. Along with memo of the appeal, a prayer was also made for staying the decree passed by the Board of Nominee. The Tribunal by an order dated 9-6-2000 in the aforesaid appeal stayed the implementation and execution of the decree passed by the Board of Nominee, subject to the appellants depositing an amount of Rs.25,000-00. Having felt aggrieved by the aforesaid order of the Cooperative Tribunal, the petitioner has filed this petition for quashing the interim order passed by the Tribunal dated 9-6-2000. It is submitted by learned counsel for the petitioner that the petitioner had filed a caveat before the Tribunal, anticipating that the respondents may file an appeal and obtain the stay order. The Tribunal, without hearing the petitioner, passed the exparte order, staying the execution of the decree passed by the Board of Nominee, subject to deposit of Rs.25,000-00 by the respondents herein. Learned counsel for the petitioner submitted that the petitioner Bank has advanced the loan amount long back but because of non payment of the loan amount, the Bank is facing financial difficulties. It is further submitted that the Bank cannot wait for realisation of loan amount for an unlimited period. It is also submitted that, in the instant case the Bank has obtained a money decree and therefore, if the respondents wants any stay, in that case also the Tribunal could have passed the stay order subject to the deposit of atleast 50 % of the decretal amount.

4. The submissions made by learned counsel for the petitioner appears to be reasonable and in a money decree stay should not liberally be granted unless atleast 50 % of the decretal amount is deposited by the appellants. It is an admitted fact that the respondents obtained loan from the Bank, and therefore they are under an obligation to repay the same. But taking advantage of the cases,

the respondents are trying to delay payment of the loan amount. Having regard to the facts & circumstances of the case, I am of the view that, the interim stay granted by the tribunal subject to payment of only Rs.25,000-00 is not a reasonable order and the Tribunal did not apply its mind before granting the stay order. Therefore, I am of the view that the Tribunal should have directed atleast to deposit 50 % of the decretal amount for staying the decree of the Board of Nominee. Accordingly the order of the Tribunal dated 9-6-2000 passed in Appeal No. 236/2000 is modified to the extent that the decree passed by the Board of Nominee in Lavad Suit No. 1084/99 shall remain stayed till the disposal of the appeal, subject to the respondents depositing 50 % of the decretal amount. The Tribunal is directed to dispose of the appeal as early as possible, preferably within a period of three months fromthe date of receipt of this order. With the aforesaid observations and directions, this petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service permitted.

Dt: 7-9-2000 (P.K. Sarkar, J)

/vgn.